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and Derive Systems, Inc.*

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

DERIVE POWER, LLC; and DERIVE
SYSTEMS, INC.,

Plaintiffs,

v.

EZ LYNK, SEZC; H&S PERFORMANCE,
LLC; THOMAS WOOD; LANCE HUNTER;
TECHIT, LLC; GDP TUNING, LLC; and
POWER PERFORMANCE ENTERPRISES,
INC.,

Defendants.

**PLAINTIFFS' SHORT FORM
MOTION TO COMPEL
PRODUCTION OF DOCUMENTS
PERTAINING TO SHARP CIRCUIT,
DUBZ BYTES, PRESTIGE, AND EZ
LYNK**

Case No. 2:16-CV-01066-BSJ

Pursuant to Federal Rule of Civil Procedure 37 and DuCivR 37-1, Plaintiffs Derive Power, LLC; and Derive Systems, Inc. (collectively referred to herein as "Derive") respectfully move the Court to compel Defendant EZ Lynk, SEZC ("EZ Lynk") to respond to all requests for production and to all interrogatories propounded on it by Derive, to include documents and

information from the files and otherwise in the possession of Sharp Circuit/Dubz Bytes (collectively “Sharp Circuit”),¹ and Prestige Worldwide (“Prestige”).

EZ Lynk has produced information in this case as it relates to EZ Lynk as a corporate entity, but little to no information from Sharp Circuit or Prestige despite the fact that responsive documents and information from Sharp Circuit and Prestige are in the possession, custody, and control of EZ Lynk, and these entities are also alter egos of EZ Lynk. All of these entities – EZ Lynk, Sharp Circuit, and Prestige -- are controlled by Brad Gintz and Thomas Wood, either collectively or individually. To date EZ Lynk has played a “shell game” with discovery, picking and choosing which entity’s information it deems responsive to Derive’s discovery requests. This is improper. Clearly, the two related entities have relevant and responsive information.

[REDACTED] And since both Sharp Circuit and Prestige effectively are EZ Lynk, or are closely tied to EZ Lynk, such information is required to be produced in response to Derive's discovery requests. Specifically, Derive seeks to have EZ Lynk respond, with information from Sharp Circuit and Prestige, to at least Interrogatories Nos. 2-3, 9-10, 13-15 and Document Request Nos. 1-2, 5, 7-12, 14-19, 21, 29-51, 58-63, 65-69, 71, 74-91. See Exhibit B.

¹ Sharp Circuit was previously named Dubz Bites, but the company changed its name.

The parties have met and conferred as required under the local rules, but have been unable to resolve the dispute. More specifically, Mike Songer (on behalf of Derive) and Cameron Hancock (on behalf of EZ Lynk and other defendants) have had multiple meet-and-confers via email and phone dating back to April 2018 in an effort to resolve this dispute. EZ Lynk has taken the position that it has met its discovery obligations, but that it would conduct a further search. Although EZ Lynk has suggested that it would search for additional documents, the dispute has continued without resolution, and, as a result, Derive believes that involvement of the Court is necessary to finally settle this matter. Particularly given the late stage in this litigation, further delay in providing responsive documents within a party's possession or control cannot be tolerated.

Moreover, pursuant to DUCivR 37-1(a)(8), Derive respectfully requests that the Court permit extended briefing to accurately explain the complex legal and factual issues underlying this dispute, in no more than 10 pages of briefing. Derive has attached a prospective extended brief to this motion as Exhibit A.

Dated: July 3, 2018.

Respectfully,

HATCH, JAMES & DODGE, P.C.

/s/ Brent O. Hatch

Brent O. Hatch

Lara A. Swensen

Michael J. Songer

CROWELL & MORING LLP

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 2018, I caused a copy of the foregoing to be filed using the Court's CM/ECF electronic filing system, which provides service to all counsel of record.

/s/ Brent O. Hatch

Brent O. Hatch